



Environmental Compliance Survey Final Report

Prepared for

*The Federal Bureau of Prisons
USP Lee*

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Environmental Compliance Survey of Federal Bureau of Prisons

USP Lee

Performed By Archer Inc.

I Executive Summary

- A. An environmental compliance survey was conducted by Archer Inc. for the Federal Bureau of Prisons; United States Penitentiary (USP) Lee, Lee County, Virginia. Jay Collert performed the survey for Archer Inc. Representatives from the Bureau of Prisons included Robert Scinta, Ken Patrick, Roger Lemater, Malachi Mitchell, and Subash C. Puri.
- B. The survey was conducted at the U.S. Penitentiary Lee over the course of 2 days: September 8 – 9, 2008. The property is located in Lee County Virginia, seven miles east of Jonesville in the Lee County Industrial Park. The facility is designated as a maximum security male institution with a small minimum security camp.
- C. According to the pre-survey information data sheet submitted prior to the survey, and the BOP website, USP Lee has an inmate population of approximately 1,635.
- D. As part of the survey, a comprehensive review of all bulk storage containers was accomplished at the institution, in particular underground storage tanks (USTs) and aboveground storage tanks (ASTs). All maintenance and operation records relating to tank and tank devices were reviewed. No findings were recorded in this area. SPCC findings were found and are located in Section II.G.
- E. The survey was performed using state and federal-specific protocols dated July 2008. Survey findings are categorized into the following areas:
 - a. Priority 1: Areas with actual or potential immediate harm to human health or the environment, potential for significant liability, or other potential to inhibit the institution from meeting its mission or the mission of the Federal Bureau of Prisons.
 - b. Priority 2: Regulatory findings that are not Priority 1. These include Federal and state laws, regulations, and applicable Executive Orders.
 - c. Priority 3: Non-regulatory findings that are not Priority 1 or Priority 2.
- F. USP Lee is located in Virginia and applicable protocols for that state were used. Items that have no state equivalence or when the state incorporates by reference the Federal requirement, the Federal citation is indicated and used. The compliance areas surveyed and a summary of findings in each of the different levels are as follows:

1. Air Emissions
 - a- Priority 1: - 0
 - b- Priority 2: - 0
 - c- Priority 3: - 0
2. Water Quality
 - a- Priority 1: - 0
 - b- Priority 2: - 0
 - c- Priority 3: - 0
3. Waste water Quality
 - a- Priority 1: - 0
 - b- Priority 2: - 0
 - c- Priority 3: - 0
4. Hazardous Waste Management
 - a- Priority 1: - 0
 - b- Priority 2: - 0
 - c- Priority 3: - 0
5. Universal Waste/Used Oil Management
 - a- Priority 1: - 0
 - b- Priority 2: - 0
 - c- Priority 3: - 0
6. Tank Management/SPCC
 - a- Priority 1: - 0
 - b- Priority 2: - 1
 - c- Priority 3: - 0
7. EPCRA
 - a- Priority 1: - 0
 - b- Priority 2: - 1
 - c- Priority 3: - 0
8. Oils/Hazardous Substances Spills and Reporting
 - a- Priority 1: - 0
 - b- Priority 2: - 0
 - c- Priority 3: - 0
9. Medical/Bio Wastes

a- Priority 1: - 0

b- Priority 2: - 0

c- Priority 3: - 0

10. Environmental Training

a- Priority 1: - 0

b- Priority 2: - 0

c- Priority 3: - 0

11. Miscellaneous Requirements

a- Priority 1: - 0

b- Priority 2: - 0

c- Priority 3: - 0

- G. As part of the survey, a list of all bulk storage containers holding, or having capacity to hold petroleum products as defined by 40 CFR 112.2 is included and is found at the end of the report (See section III). In addition, a list of all locations where hazardous waste was improperly stored is included in the same table. However, all hazardous waste was properly stored.

II Survey Findings – USP Lee

A. Air Emissions

1. No Findings

B. Water Quality

1. No Findings

C. Waste Water Quality

1. No Findings

D. Hazardous Waste Management

1. No Findings

E. Universal Waste/Waste Oil Management

1. No Findings

F. Tank Management/SPCC

1. Audit Finding: PRI 2 – TM – 001: Incomplete SPCC

- a- **Activity/Operation:** The institution stores in above ground containers/tanks over 1,320 gallons of oil/petroleum.
- b- **Requirement:** IAW 40 CFR 112.7, facilities that have more than 1,320 gallons of oil/petroleum in above ground storage tanks must prepare and maintain a Spill Prevention, Controls and Countermeasures Plan (SPCC). The SPCC Plan, at the discretion of the facility, may be in any format as long as all of the SPCC elements are contained in the plan and a cross reference is included if the plan does not follow the order listed in 40 CFR 112.7.
- c- **Finding:** After reviewing the plan containing the SPCC elements, the following areas were missing:
 - No regulatory cross reference for 40 CFR 112 could be found
 - Sewing machine oil in 55 gallon drums (2 ea) in the UNICOR warehouse was not in plan or on the site map.
- d- **Recommendation:** An SPCC plan should be developed following all of the elements from 40 CFR 112. Once developed, comply with all requirements listed in the SPCC plan.

G. Emergency Planning and Community-Right-to-Know (EPCRA)

1. Audit Finding: PRI 2-EM-001: Toxic Release Inventory (TRI) Report

- a- **Activity/Operation:** This facility otherwise uses EPCRA Section 313 chemicals and chemical compounds.

- b- **Requirement:** IAW Executive Order 13423, federal facilities must comply with all sections of EPCRA, including Section 313. The TRI report is due each July 1.
- c- **Finding:** After interviewing institution personnel, no documentation could be found to determine compliance with this requirement. Compliance with EPCRA requires calculations to be completed to ensure reporting either does or does not have to be accomplished. To accomplish this process, the list of Section 313 chemicals must be used to determine if Section 313 reporting is required.
- d- **Recommendation:** EPCRA considers all adjacent and contiguous properties, under a single ownership or control, to be one facility. Therefore, for calculation purposes, the entire facility would be counted cumulatively. Suggest a calculation be completed to see if any EPCRA chemicals would have to be reported under Section 313: specifically, mercury, lead, and any other EPCRA 313 chemicals or chemical compounds over the threshold for reporting.

H. Oils and Hazardous Substances Spills and Reporting

- 1. **No findings found in this area.**

I. Medical/Biohazard Wastes

- 1. **No findings found in this area.**

J. Environmental Training

- 1. **No Findings found in this area.**

III Additional Information

The following table lists the quantity, type, and locations of all bulk storage containers and the quantity, type, and location of improperly stored hazardous waste.

Material/Waste	Location	Quantity
Unleaded Gas	Garage	6,000gal UST (1)
Diesel Fuel Oil	Garage	2,000 gal UST (1)
Used Oil	Garage	250 gal UST (1)
#2 Fuel Oil	Powerhouse	15,000 gal UST (2)
#2 Fuel Oil	Powerhouse	200 gal AGST (day tanks) (2)
Lube Oil	Powerhouse	55-gal drum (6)
#2 Fuel Oil	Camp Boiler	2,000 gal UST (1)
Lube Oil/Hydraulic Oil	Garage/Landscape	55-gal drum (10)
Food-Grade Oil	Food Service Inside	300 gal container (1)
Food-Grade Oil	Food Service Outside	300 gal container (1)
Sewing Machine Oil	UNICOR Warehouse	55-gal drum (2)
Food-grade oil	Outside food service	300 gal container (1)
Hydraulic Oil	Haz Waste Building	55-gal drum (6)
Waste Oil	Haz Waste Building	55-gal drum (1)
Hydraulic Oil	UNICOR Factory	Presses 150 gal (3)

IV Federal Rules

The following citations were used to support the findings based on federal regulations. The citations are listed in numeric order.

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and located in a single geographical oil or gas field operated by a single operator.

Regional Administrator means the Regional Administrator of the Environmental Protection Agency, in and for the Region in which the facility is located.

Repair means any work necessary to maintain or restore a container to a condition suitable for safe operation, other than that necessary for ordinary, day-to-day maintenance to maintain the functional integrity of the container and that does not weaken the container.

Spill Prevention, Control, and Countermeasure Plan; SPCC Plan, or Plan means the document required by § 112.3 that details the equipment, workforce, procedures, and steps to prevent, control, and provide adequate countermeasures to a discharge.

Storage capacity of a container means the shell capacity of the container.

Transportation-related and non-transportation-related, as applied to an onshore or offshore facility, are defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of the Environmental Protection Agency, dated November 24, 1971, (Appendix A of this part).

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Pacific Island Governments.

Vegetable oil means a non-petroleum oil or fat of vegetable origin, including but not limited to oils and fats derived from plant seeds, nuts, fruits, and kernels.

Vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, other than a public vessel.

Wetlands means those areas that are inundated or saturated by surface or groundwater at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include play-

lakes, swamps, marshes, bogs, and similar areas such as sloughs, prairie potholes, wet meadows, prairie river overflows, mudflats, and natural ponds.

Worst case discharge for an onshore non-transportation-related facility means the largest foreseeable discharge in adverse weather conditions as determined using the worksheets in Appendix D to this part.

[67 FR 47140, July 17, 2002, as amended at 71 FR 77290, Dec. 26, 2006]

§ 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan.

The owner or operator of an onshore or offshore facility subject to this section must prepare a Spill Prevention, Control, and Countermeasure Plan (hereafter “SPCC Plan” or “Plan”), in writing, and in accordance with § 112.7, and any other applicable section of this part.

(a)(1) If your onshore or offshore facility was in operation on or before August 16, 2002, you must maintain your Plan, but must amend it, if necessary to ensure compliance with this part, and implement the Plan no later than July 1, 2009. If your onshore or offshore facility becomes operational after August 16, 2002, through July 1, 2009, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan on or before July 1, 2009.

(2) If your onshore facility is a farm as defined in § 112.2, the compliance date described in paragraph (a)(1) of this section is delayed until the effective date of a rule establishing SPCC requirements specifically for farms or otherwise establishes dates by which farms must comply with the provisions of this part.

(b)(1) If you are the owner or operator of an onshore or offshore facility that becomes operational after July 1, 2009, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations.

(2) If your onshore facility meets the definition of farm in § 112.2, the compliance date described in paragraph (b)(1) of this section is delayed until the effective date of a rule establishing

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SPCC requirements specifically for farms or otherwise establishes dates by which farms must comply with the provisions of this part.

(c) If you are the owner or operator of an onshore or offshore mobile facility, such as an onshore drilling or workover rig, barge mounted offshore drilling or workover rig, or portable fueling facility, you must prepare, implement, and maintain a facility Plan as required by this section. You must maintain your Plan, but must amend and implement it, if necessary to ensure compliance with this part, on or before July 1, 2009. If your onshore or offshore mobile facility becomes operational after July 1, 2009, and could reasonably be expected to have a discharge as described in §112.1(b), you must prepare and implement a Plan before you begin operations. This provision does not require that you prepare a new Plan each time you move the facility to a new site. The Plan may be a general Plan. When you move the mobile or portable facility, you must locate and install it using the discharge prevention practices outlined in the Plan for the facility. The Plan is applicable only while the facility is in a fixed (non-transportation) operating mode.

(d) Except as provided in §112.6, a licensed Professional Engineer must review and certify a Plan for it to be effective to satisfy the requirements of this part.

(1) By means of this certification the Professional Engineer attests:

(i) That he is familiar with the requirements of this part ;

(ii) That he or his agent has visited and examined the facility;

(iii) That the Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards, and with the requirements of this part;

(iv) That procedures for required inspections and testing have been established; and

(v) That the Plan is adequate for the facility.

(2) Such certification shall in no way relieve the owner or operator of a facility of his duty to prepare and fully implement such Plan in accordance with the requirements of this part.

(e) If you are the owner or operator of a facility for which a Plan is required under this section, you must:

(1) Maintain a complete copy of the Plan at the facility if the facility is normally attended at least four hours per day, or at the nearest field office if the facility is not so attended, and

(2) Have the Plan available to the Regional Administrator for on-site review during normal working hours.

(f) *Extension of time.* (1) The Regional Administrator may authorize an extension of time for the preparation and full implementation of a Plan, or any amendment thereto, beyond the time permitted for the preparation, implementation, or amendment of a Plan under this part, when he finds that the owner or operator of a facility subject to this section, cannot fully comply with the requirements as a result of either nonavailability of qualified personnel, or delays in construction or equipment delivery beyond the control and without the fault of such owner or operator or his agents or employees.

(2) If you are an owner or operator seeking an extension of time under paragraph (f)(1) of this section, you may submit a written extension request to the Regional Administrator. Your request must include:

(i) A full explanation of the cause for any such delay and the specific aspects of the Plan affected by the delay;

(ii) A full discussion of actions being taken or contemplated to minimize or mitigate such delay; and

(iii) A proposed time schedule for the implementation of any corrective actions being taken or contemplated, including interim dates for completion of tests or studies, installation and operation of any necessary equipment, or other preventive measures. In addition you may present additional oral or written statements in support of your extension request.

(3) The submission of a written extension request under paragraph (f)(2) of this section does not relieve you of your obligation to comply with the requirements of this part. The Regional Administrator may request a copy of your Plan to evaluate the extension request. When the Regional Administrator authorizes an extension of time

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for particular equipment or other specific aspects of the Plan, such extension does not affect your obligation to comply with the requirements related to other equipment or other specific aspects of the Plan for which the Regional Administrator has not expressly authorized an extension.

(g) *Qualified Facilities.* The owner or operator of a qualified facility as defined in this subparagraph may self-certify his or her facility's Plan, as provided in §112.6. A qualified facility is one that:

(1) Has an aggregate aboveground storage capacity of 10,000 gallons or less; and

(2) Has had no single discharge as described in §112.1(b) exceeding 1,000 U.S. gallons or no two discharges as described in §112.1(b) each exceeding 42 U.S. gallons within any twelve month period in the three years prior to the SPCC Plan self-certification date, or since becoming subject to this part if the facility has been in operation for less than three years (other than discharges as described in §112.1(b) that are the result of natural disasters, acts of war, or terrorism).

[67 FR 47140, July 17, 2002, as amended at 68 FR 1351, Jan. 9, 2003; 68 FR 18894, Apr. 17, 2003; 69 FR 48798, Aug. 11, 2004; 71 FR 8466, Feb. 17, 2006; 71 FR 77290, Dec. 26, 2006; 72 FR 27447, May 16, 2007]

§ 112.4 Amendment of Spill Prevention, Control, and Countermeasure Plan by Regional Administrator.

If you are the owner or operator of a facility subject to this part, you must:

(a) Notwithstanding compliance with §112.3, whenever your facility has discharged more than 1,000 U.S. gallons of oil in a single discharge as described in §112.1(b), or discharged more than 42 U.S. gallons of oil in each of two discharges as described in §112.1(b), occurring within any twelve month period, submit the following information to the Regional Administrator within 60 days from the time the facility becomes subject to this section:

(1) Name of the facility;

(2) Your name;

(3) Location of the facility;

(4) Maximum storage or handling capacity of the facility and normal daily throughput;

(5) Corrective action and countermeasures you have taken, including a description of equipment repairs and replacements;

(6) An adequate description of the facility, including maps, flow diagrams, and topographical maps, as necessary;

(7) The cause of such discharge as described in §112.1(b), including a failure analysis of the system or subsystem in which the failure occurred;

(8) Additional preventive measures you have taken or contemplated to minimize the possibility of recurrence; and

(9) Such other information as the Regional Administrator may reasonably require pertinent to the Plan or discharge.

(b) Take no action under this section until it applies to your facility. This section does not apply until the expiration of the time permitted for the initial preparation and implementation of the Plan under §112.3, but not including any amendments to the Plan.

(c) Send to the appropriate agency or agencies in charge of oil pollution control activities in the State in which the facility is located a complete copy of all information you provided to the Regional Administrator under paragraph (a) of this section. Upon receipt of the information such State agency or agencies may conduct a review and make recommendations to the Regional Administrator as to further procedures, methods, equipment, and other requirements necessary to prevent and to contain discharges from your facility.

(d) Amend your Plan, if after review by the Regional Administrator of the information you submit under paragraph (a) of this section, or submission of information to EPA by the State agency under paragraph (c) of this section, or after on-site review of your Plan, the Regional Administrator requires that you do so. The Regional Administrator may require you to amend your Plan if he finds that it does not meet the requirements of this part or that amendment is necessary to prevent and contain discharges from your facility.

(e) Act in accordance with this paragraph when the Regional Administrator proposes by certified mail or by personal delivery that you amend your

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SPCC Plan. If the owner or operator is a corporation, he must also notify by mail the registered agent of such corporation, if any and if known, in the State in which the facility is located. The Regional Administrator must specify the terms of such proposed amendment. Within 30 days from receipt of such notice, you may submit written information, views, and arguments on the proposed amendment. After considering all relevant material presented, the Regional Administrator must either notify you of any amendment required or rescind the notice. You must amend your Plan as required within 30 days after such notice, unless the Regional Administrator, for good cause, specifies another effective date. You must implement the amended Plan as soon as possible, but not later than six months after you amend your Plan, unless the Regional Administrator specifies another date.

(f) If you appeal a decision made by the Regional Administrator requiring an amendment to an SPCC Plan, send the appeal to the EPA Administrator in writing within 30 days of receipt of the notice from the Regional Administrator requiring the amendment under paragraph (e) of this section. You must send a complete copy of the appeal to the Regional Administrator at the time you make the appeal. The appeal must contain a clear and concise statement of the issues and points of fact in the case. It may also contain additional information from you, or from any other person. The EPA Administrator may request additional information from you, or from any other person. The EPA Administrator must render a decision within 60 days of receiving the appeal and must notify you of his decision.

§ 112.5 Amendment of Spill Prevention, Control, and Countermeasure Plan by owners or operators.

If you are the owner or operator of a facility subject to this part, you must:

(a) Amend the SPCC Plan for your facility in accordance with the general requirements in § 112.7, and with any specific section of this part applicable to your facility, when there is a change in the facility design, construction, operation, or maintenance that materi-

ally affects its potential for a discharge as described in § 112.1(b). Examples of changes that may require amendment of the Plan include, but are not limited to: commissioning or decommissioning containers; replacement, reconstruction, or movement of containers; reconstruction, replacement, or installation of piping systems; construction or demolition that might alter secondary containment structures; changes of product or service; or revision of standard operation or maintenance procedures at a facility. An amendment made under this section must be prepared within six months, and implemented as soon as possible, but not later than six months following preparation of the amendment.

(b) Notwithstanding compliance with paragraph (a) of this section, complete a review and evaluation of the SPCC Plan at least once every five years from the date your facility becomes subject to this part; or, if your facility was in operation on or before August 16, 2002, five years from the date your last review was required under this part. As a result of this review and evaluation, you must amend your SPCC Plan within six months of the review to include more effective prevention and control technology if the technology has been field-proven at the time of the review and will significantly reduce the likelihood of a discharge as described in § 112.1(b) from the facility. You must implement any amendment as soon as possible, but not later than six months following preparation of any amendment. You must document your completion of the review and evaluation, and must sign a statement as to whether you will amend the Plan, either at the beginning or end of the Plan or in a log or an appendix to the Plan. The following words will suffice, "I have completed review and evaluation of the SPCC Plan for (name of facility) on (date), and will (will not) amend the Plan as a result."

(c) Except as provided in § 112.6, have a Professional Engineer certify any technical amendments to your Plan in accordance with § 112.3(d).

[67 FR 47140, July 17, 2002, as amended at 71 FR 77291, Dec. 26, 2006]

§ 112.6**40 CFR Ch. I (7–1–08 Edition)****§ 112.6 Qualified Facility Plan Requirements.**

(a) *Preparation and Self-certification of Plan.* If you are the owner or operator of a facility that meets the qualified facility qualification criteria in § 112.3(g), you may choose to self-certify your Plan. You must certify in the Plan that:

(1) You are familiar with the requirements of this part;

(2) You have visited and examined the facility;

(3) The Plan has been prepared in accordance with accepted and sound industry practices and standards, and with the requirements of this part;

(4) Procedures for required inspections and testing have been established;

(5) The Plan is being fully implemented;

(6) The facility meets the qualification criteria set forth under § 112.3(g);

(7) The Plan does not deviate from any requirement of this part as allowed by §§ 112.7(a)(2) and 112.7(d), except as provided in paragraph (c) of this section; and

(8) The Plan and individual(s) responsible for implementing the Plan have the full approval of management and the facility owner or operator has committed the necessary resources to fully implement the Plan.

(b) *Self-certification of Technical Amendments.* If you self-certify your Plan pursuant to paragraph (a) of this section, you must certify any technical amendments to your Plan in accordance with paragraph (a) of this section when there is a change in the facility design, construction, operation, or maintenance that affects its potential for a discharge as described in § 112.1(b) except:

(1) If a Professional Engineer certified a portion of your Plan in accordance with paragraph (d) of this section, and the technical amendment affects this portion of the Plan, you must have the amended provisions of your Plan certified by a Professional Engineer in accordance with § 112.6(d)(2).

(2) If the change is such that the facility no longer meets the qualifying criteria in § 112.3(g) because it exceeds 10,000 gallons in aggregate aboveground storage capacity, you must prepare a

Plan in accordance with the general Plan requirements in § 112.7 and the applicable requirements in subparts B and C, including having the Plan certified by a Professional Engineer as required under § 112.3(d).

(c) *Applicable Requirements.* Except as provided in this subparagraph, your self-certified SPCC Plan must comply with § 112.7 and the applicable requirements in subparts B and C of this part:

(1) *Environmental Equivalence.* Your Plan may not include alternate methods which provide environmental equivalence pursuant to § 112.7(a)(2), unless each alternate method has been reviewed and certified in writing by a Professional Engineer, as provided in paragraph (d) of this section.

(2) *Impracticability.* Your Plan may not include any determinations that secondary containment is impracticable and provisions in lieu of secondary containment pursuant to § 112.7(d), unless each such determination and alternative provision has been reviewed and certified in writing by a Professional Engineer, as provided in paragraph (d) of this section.

(3) *Security (excluding oil production facilities).* You must either:

(i) Comply with the requirements under § 112.7(g); or

(ii) Describe in your Plan how you secure and control access to the oil handling, processing and storage areas; secure master flow and drain valves; prevent unauthorized access to starter controls on oil pumps; secure out-of-service and loading/unloading connections of oil pipelines; address the appropriateness of security lighting to both prevent acts of vandalism and assist in the discovery of oil discharges.

(4) *Bulk Storage Container Inspections.* You must either:

(i) Comply with the requirements under § 112.8(c)(6) or § 112.12(c)(6), as applicable; or

(ii) Test/inspect each aboveground container for integrity on a regular schedule and whenever material repairs are made. You must determine, in accordance with industry standards, the appropriate qualifications for personnel performing tests and inspections, the frequency and type of testing and inspections which take into account container size, configuration,

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and design (such as containers that are: shop built, skid-mounted, elevated, equipped with a liner, double walled, or partially buried). Examples of these integrity tests include, but are not limited to: visual inspection, hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing, or other systems of non-destructive testing. You must keep comparison records and you must also inspect the container's supports and foundations. In addition, you must frequently inspect the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. Records of inspections and tests kept under usual and customary business practices satisfy the recordkeeping requirements of this paragraph.

(d) *Professional Engineer Certification of Portions of a Qualified Facility's Self-certified Plan.* As described in paragraph (c) of this section, the facility owner or operator may not self-certify alternative measures allowed under § 112.7(a)(2) or (d), that are included in the facility's Plan. Such measures must be reviewed and certified, in writing, by a licensed Professional Engineer as follows:

(1) For each alternative measure allowed under § 112.7(a)(2), the Plan must be accompanied by a written statement by a Professional Engineer that states the reason for nonconformance and describes the alternative method and how it provides equivalent environmental protection in accordance with § 112.7(a)(2). For each determination of impracticability of secondary containment pursuant to § 112.7(d), the Plan must clearly explain why secondary containment measures are not practicable at this facility and provide the alternative measures required in § 112.7(d) in lieu of secondary containment.

(2) By certifying each measure allowed under § 112.7(a)(2) and (d), the Professional Engineer attests:

(i) That he is familiar with the requirements of this part;

(ii) That he or his agent has visited and examined the facility; and

(iii) That the alternative method of environmental equivalence in accordance with § 112.7(a)(2) or the determination of impracticability and alter-

native measures in accordance with § 112.7(d) is consistent with good engineering practice, including consideration of applicable industry standards, and with the requirements of this part.

(3) The review and certification by the Professional Engineer under this paragraph is limited to the alternative method which achieves equivalent environmental protection pursuant to § 112.7(a)(2) or to the impracticability determination and measures in lieu of secondary containment pursuant to § 112.7(d).

[71 FR 77291, Dec. 26, 2006]

§ 112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans.

If you are the owner or operator of a facility subject to this part you must prepare a Plan in accordance with good engineering practices. The Plan must have the full approval of management at a level of authority to commit the necessary resources to fully implement the Plan. You must prepare the Plan in writing. If you do not follow the sequence specified in this section for the Plan, you must prepare an equivalent Plan acceptable to the Regional Administrator that meets all of the applicable requirements listed in this part, and you must supplement it with a section cross-referencing the location of requirements listed in this part and the equivalent requirements in the other prevention plan. If the Plan calls for additional facilities or procedures, methods, or equipment not yet fully operational, you must discuss these items in separate paragraphs, and must explain separately the details of installation and operational start-up. As detailed elsewhere in this section, you must also:

(a)(1) Include a discussion of your facility's conformance with the requirements listed in this part.

(2) Comply with all applicable requirements listed in this part. Except as provided in § 112.6, your Plan may deviate from the requirements in paragraphs (g), (h)(2) and (3), and (i) of this section and the requirements in subparts B and C of this part, except the secondary containment requirements in paragraphs (c) and (h)(1) of this section, and §§ 112.8(c)(2), 112.8(c)(11),

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112.9(c)(2), 112.10(c), 112.12(c)(2), and 112.12(c)(11), where applicable to a specific facility, if you provide equivalent environmental protection by some other means of spill prevention, control, or countermeasure. Where your Plan does not conform to the applicable requirements in paragraphs (g), (h)(2) and (3), and (i) of this section, or the requirements of subparts B and C of this part, except the secondary containment requirements in paragraph (c) and (h)(1) of this section, and §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), and 112.12(c)(11), you must state the reasons for non-conformance in your Plan and describe in detail alternate methods and how you will achieve equivalent environmental protection. If the Regional Administrator determines that the measures described in your Plan do not provide equivalent environmental protection, he may require that you amend your Plan, following the procedures in § 112.4(d) and (e).

(3) Describe in your Plan the physical layout of the facility and include a facility diagram, which must mark the location and contents of each container. The facility diagram must include completely buried tanks that are otherwise exempted from the requirements of this part under § 112.1(d)(4). The facility diagram must also include all transfer stations and connecting pipes. You must also address in your Plan:

(i) The type of oil in each container and its storage capacity;

(ii) Discharge prevention measures including procedures for routine handling of products (loading, unloading, and facility transfers, etc.);

(iii) Discharge or drainage controls such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge;

(iv) Countermeasures for discharge discovery, response, and cleanup (both the facility's capability and those that might be required of a contractor);

(v) Methods of disposal of recovered materials in accordance with applicable legal requirements; and

(vi) Contact list and phone numbers for the facility response coordinator, National Response Center, cleanup con-

tractors with whom you have an agreement for response, and all appropriate Federal, State, and local agencies who must be contacted in case of a discharge as described in § 112.1(b).

(4) Unless you have submitted a response plan under § 112.20, provide information and procedures in your Plan to enable a person reporting a discharge as described in § 112.1(b) to relate information on the exact address or location and phone number of the facility; the date and time of the discharge; the type of material discharged; estimates of the total quantity discharged as described in § 112.1(b); the source of the discharge; a description of all affected media; the cause of the discharge; any damages or injuries caused by the discharge; actions being used to stop, remove, and mitigate the effects of the discharge; whether an evacuation may be needed; and, the names of individuals and/or organizations who have also been contacted.

(5) Unless you have submitted a response plan under § 112.20, organize portions of the Plan describing procedures you will use when a discharge occurs in a way that will make them readily usable in an emergency, and include appropriate supporting material as appendices.

(b) Where experience indicates a reasonable potential for equipment failure (such as loading or unloading equipment, tank overflow, rupture, or leakage, or any other equipment known to be a source of a discharge), include in your Plan a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure.

(c) Provide appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in § 112.1(b), except as provided in paragraph (k) of this section for qualified oil-filled operational equipment. The entire containment system, including walls and floor, must be capable of containing oil and must be constructed so that any discharge from a primary containment system, such as a tank or pipe, will not escape the containment system before cleanup

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occurs. At a minimum, you must use one of the following prevention systems or its equivalent:

- (1) For onshore facilities:
 - (i) Dikes, berms, or retaining walls sufficiently impervious to contain oil;
 - (ii) Curbing;
 - (iii) Culverting, gutters, or other drainage systems;
 - (iv) Weirs, booms, or other barriers;
 - (v) Spill diversion ponds;
 - (vi) Retention ponds; or
 - (vii) Sorbent materials.

(2) For offshore facilities:

- (i) Curbing or drip pans; or
- (ii) Sumps and collection systems.

(d) Provided your Plan is certified by a licensed Professional Engineer under § 112.3(d), or, in the case of a qualified facility that meets the criteria in § 112.3(g), the relevant sections of your Plan are certified by a licensed Professional Engineer under § 112.6(d), if you determine that the installation of any of the structures or pieces of equipment listed in paragraphs (c) and (h)(1) of this section, and §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), and 112.12(c)(11) to prevent a discharge as described in § 112.1(b) from any onshore or offshore facility is not practicable, you must clearly explain in your Plan why such measures are not practicable; for bulk storage containers, conduct both periodic integrity testing of the containers and periodic integrity and leak testing of the valves and piping; and, unless you have submitted a response plan under § 112.20, provide in your Plan the following:

(1) An oil spill contingency plan following the provisions of part 109 of this chapter.

(2) A written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful.

(e) *Inspections, tests, and records.* Conduct inspections and tests required by this part in accordance with written procedures that you or the certifying engineer develop for the facility. You must keep these written procedures and a record of the inspections and tests, signed by the appropriate supervisor or inspector, with the SPCC Plan for a period of three years. Records of

inspections and tests kept under usual and customary business practices will suffice for purposes of this paragraph.

(f) *Personnel, training, and discharge prevention procedures.* (1) At a minimum, train your oil-handling personnel in the operation and maintenance of equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and, the contents of the facility SPCC Plan.

(2) Designate a person at each applicable facility who is accountable for discharge prevention and who reports to facility management.

(3) Schedule and conduct discharge prevention briefings for your oil-handling personnel at least once a year to assure adequate understanding of the SPCC Plan for that facility. Such briefings must highlight and describe known discharges as described in § 112.1(b) or failures, malfunctioning components, and any recently developed precautionary measures.

(g) *Security (excluding oil production facilities).* (1) Fully fence each facility handling, processing, or storing oil, and lock and/or guard entrance gates when the facility is not in production or is unattended.

(2) Ensure that the master flow and drain valves and any other valves permitting direct outward flow of the container's contents to the surface have adequate security measures so that they remain in the closed position when in non-operating or non-standby status.

(3) Lock the starter control on each oil pump in the "off" position and locate it at a site accessible only to authorized personnel when the pump is in a non-operating or non-standby status.

(4) Securely cap or blank-flange the loading/unloading connections of oil pipelines or facility piping when not in service or when in standby service for an extended time. This security practice also applies to piping that is emptied of liquid content either by draining or by inert gas pressure.

(5) Provide facility lighting commensurate with the type and location of the facility that will assist in the:

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(i) Discovery of discharges occurring during hours of darkness, both by operating personnel, if present, and by non-operating personnel (the general public, local police, etc.); and

(ii) Prevention of discharges occurring through acts of vandalism.

(h) *Facility tank car and tank truck loading/unloading rack (excluding off-shore facilities).* (1) Where loading/unloading area drainage does not flow into a catchment basin or treatment facility designed to handle discharges, use a quick drainage system for tank car or tank truck loading and unloading areas. You must design any containment system to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the facility.

(2) Provide an interlocked warning light or physical barrier system, warning signs, wheel chocks, or vehicle break interlock system in loading/unloading areas to prevent vehicles from departing before complete disconnection of flexible or fixed oil transfer lines.

(3) Prior to filling and departure of any tank car or tank truck, closely inspect for discharges the lowermost drain and all outlets of such vehicles, and if necessary, ensure that they are tightened, adjusted, or replaced to prevent liquid discharge while in transit.

(i) If a field-constructed aboveground container undergoes a repair, alteration, reconstruction, or a change in service that might affect the risk of a discharge or failure due to brittle fracture or other catastrophe, or has discharged oil or failed due to brittle fracture failure or other catastrophe, evaluate the container for risk of discharge or failure due to brittle fracture or other catastrophe, and as necessary, take appropriate action.

(j) In addition to the minimal prevention standards listed under this section, include in your Plan a complete discussion of conformance with the applicable requirements and other effective discharge prevention and containment procedures listed in this part or any applicable more stringent State rules, regulations, and guidelines.

(k) *Qualified Oil-filled Operational Equipment.* The owner or operator of a

facility with oil-filled operational equipment that meets the qualification criteria in paragraph (k)(1) of this subsection may choose to implement for this qualified oil-filled operational equipment the alternate requirements as described in paragraph (k)(2) of this subsection in lieu of general secondary containment required in paragraph (c) of this section.

(1) *Qualification Criteria—Reportable Discharge History.* The owner or operator of a facility that has had no single discharge as described in §112.1(b) from any oil-filled operational equipment exceeding 1,000 U.S. gallons or no two discharges as described in §112.1(b) from any oil-filled operational equipment each exceeding 42 U.S. gallons within any twelve month period in the three years prior to the SPCC Plan certification date, or since becoming subject to this part if the facility has been in operation for less than three years (other than oil discharges as described in §112.1(b) that are the result of natural disasters, acts of war or terrorism); and

(2) *Alternative Requirements to General Secondary Containment.* If secondary containment is not provided for qualified oil-filled operational equipment pursuant to paragraph (c) of this section, the owner or operator of a facility with qualified oil-filled operational equipment must:

(i) Establish and document the facility procedures for inspections or a monitoring program to detect equipment failure and/or a discharge; and

(ii) Unless you have submitted a response plan under §112.20, provide in your Plan the following:

(A) An oil spill contingency plan following the provisions of part 109 of this chapter.

(B) A written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful.

[67 FR 47140, July 17, 2002, as amended at 71 FR 77292, Dec. 26, 2006]

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Subpart B—Requirements for Petroleum Oils and Non-Petroleum Oils, Except Animal Fats and Oils and Greases, and Fish and Marine Mammal Oils; and Vegetable Oils (Including Oils from Seeds, Nuts, Fruits, and Kernels)

SOURCE: 67 FR 47146, July 17, 2002, unless otherwise noted.

§ 112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities).

If you are the owner or operator of an onshore facility (excluding a production facility), you must:

(a) Meet the general requirements for the Plan listed under § 112.7, and the specific discharge prevention and containment procedures listed in this section.

(b) *Facility drainage.* (1) Restrain drainage from diked storage areas by valves to prevent a discharge into the drainage system or facility effluent treatment system, except where facility systems are designed to control such discharge. You may empty diked areas by pumps or ejectors; however, you must manually activate these pumps or ejectors and must inspect the condition of the accumulation before starting, to ensure no oil will be discharged.

(2) Use valves of manual, open-and-closed design, for the drainage of diked areas. You may not use flapper-type drain valves to drain diked areas. If your facility drainage drains directly into a watercourse and not into an on-site wastewater treatment plant, you must inspect and may drain uncontaminated retained stormwater, as provided in paragraphs (c)(3)(ii), (iii), and (iv) of this section.

(3) Design facility drainage systems from undiked areas with a potential for a discharge (such as where piping is located outside containment walls or where tank truck discharges may occur outside the loading area) to flow into ponds, lagoons, or catchment basins designed to retain oil or return it to the facility. You must not locate

catchment basins in areas subject to periodic flooding.

(4) If facility drainage is not engineered as in paragraph (b)(3) of this section, equip the final discharge of all ditches inside the facility with a diversion system that would, in the event of an uncontrolled discharge, retain oil in the facility.

(5) Where drainage waters are treated in more than one treatment unit and such treatment is continuous, and pump transfer is needed, provide two “lift” pumps and permanently install at least one of the pumps. Whatever techniques you use, you must engineer facility drainage systems to prevent a discharge as described in § 112.1(b) in case there is an equipment failure or human error at the facility.

(c) *Bulk storage containers.* (1) Not use a container for the storage of oil unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature.

(2) Construct all bulk storage tank installations (except mobile refuelers) so that you provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. You must ensure that diked areas are sufficiently impervious to contain discharged oil. Dikes, containment curbs, and pits are commonly employed for this purpose. You may also use an alternative system consisting of a drainage trench enclosure that must be arranged so that any discharge will terminate and be safely confined in a facility catchment basin or holding pond.

(3) Not allow drainage of uncontaminated rainwater from the diked area into a storm drain or discharge of an effluent into an open watercourse, lake, or pond, bypassing the facility treatment system unless you:

(i) Normally keep the bypass valve sealed closed.

(ii) Inspect the retained rainwater to ensure that its presence will not cause a discharge as described in § 112.1(b).

(iii) Open the bypass valve and reseal it following drainage under responsible supervision; and

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(iv) Keep adequate records of such events, for example, any records required under permits issued in accordance with §§ 122.41(j)(2) and 122.41(m)(3) of this chapter.

(4) Protect any completely buried metallic storage tank installed on or after January 10, 1974 from corrosion by coatings or cathodic protection compatible with local soil conditions. You must regularly leak test such completely buried metallic storage tanks.

(5) Not use partially buried or bunkered metallic tanks for the storage of oil, unless you protect the buried section of the tank from corrosion. You must protect partially buried and bunkered tanks from corrosion by coatings or cathodic protection compatible with local soil conditions.

(6) Test each aboveground container for integrity on a regular schedule, and whenever you make material repairs. The frequency of and type of testing must take into account container size and design (such as floating roof, skid-mounted, elevated, or partially buried). You must combine visual inspection with another testing technique such as hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing, or another system of non-destructive shell testing. You must keep comparison records and you must also inspect the container's supports and foundations. In addition, you must frequently inspect the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. Records of inspections and tests kept under usual and customary business practices will suffice for purposes of this paragraph.

(7) Control leakage through defective internal heating coils by monitoring the steam return and exhaust lines for contamination from internal heating coils that discharge into an open watercourse, or pass the steam return or exhaust lines through a settling tank, skimmer, or other separation or retention system.

(8) Engineer or update each container installation in accordance with good engineering practice to avoid discharges. You must provide at least one of the following devices:

(i) High liquid level alarms with an audible or visual signal at a constantly attended operation or surveillance station. In smaller facilities an audible air vent may suffice.

(ii) High liquid level pump cutoff devices set to stop flow at a predetermined container content level.

(iii) Direct audible or code signal communication between the container gauger and the pumping station.

(iv) A fast response system for determining the liquid level of each bulk storage container such as digital computers, telepulse, or direct vision gauges. If you use this alternative, a person must be present to monitor gauges and the overall filling of bulk storage containers.

(v) You must regularly test liquid level sensing devices to ensure proper operation.

(9) Observe effluent treatment facilities frequently enough to detect possible system upsets that could cause a discharge as described in § 112.1(b).

(10) Promptly correct visible discharges which result in a loss of oil from the container, including but not limited to seams, gaskets, piping, pumps, valves, rivets, and bolts. You must promptly remove any accumulations of oil in diked areas.

(11) Position or locate mobile or portable oil storage containers to prevent a discharge as described in § 112.1(b). Except for mobile refuelers, you must furnish a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation.

(d) *Facility transfer operations, pumping, and facility process.* (1) Provide buried piping that is installed or replaced on or after August 16, 2002, with a protective wrapping and coating. You must also cathodically protect such buried piping installations or otherwise satisfy the corrosion protection standards for piping in part 280 of this chapter or a State program approved under part 281 of this chapter. If a section of buried line is exposed for any reason, you must carefully inspect it for deterioration. If you find corrosion damage,

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you must undertake additional examination and corrective action as indicated by the magnitude of the damage.

(2) Cap or blank-flange the terminal connection at the transfer point and mark it as to origin when piping is not in service or is in standby service for an extended time.

(3) Properly design pipe supports to minimize abrasion and corrosion and allow for expansion and contraction.

(4) Regularly inspect all aboveground valves, piping, and appurtenances. During the inspection you must assess the general condition of items, such as flange joints, expansion joints, valve glands and bodies, catch pans, pipeline supports, locking of valves, and metal surfaces. You must also conduct integrity and leak testing of buried piping at the time of installation, modification, construction, relocation, or replacement.

(5) Warn all vehicles entering the facility to be sure that no vehicle will endanger aboveground piping or other oil transfer operations.

[67 FR 47146, July 17, 2002, as amended at 71 FR 77293, Dec. 26, 2006]

§ 112.9 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities.

If you are the owner or operator of an onshore production facility, you must:

(a) Meet the general requirements for the Plan listed under § 112.7, and the specific discharge prevention and containment procedures listed under this section.

(b) *Oil production facility drainage.* (1) At tank batteries and separation and treating areas where there is a reasonable possibility of a discharge as described in § 112.1(b), close and seal at all times drains of dikes or drains of equivalent measures required under § 112.7(c)(1), except when draining uncontaminated rainwater. Prior to drainage, you must inspect the diked area and take action as provided in § 112.8(c)(3)(ii), (iii), and (iv). You must remove accumulated oil on the rainwater and return it to storage or dispose of it in accordance with legally approved methods.

(2) Inspect at regularly scheduled intervals field drainage systems (such as drainage ditches or road ditches), and

oil traps, sumps, or skimmers, for an accumulation of oil that may have resulted from any small discharge. You must promptly remove any accumulations of oil.

(c) *Oil production facility bulk storage containers.* (1) Not use a container for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage.

(2) Provide all tank battery, separation, and treating facility installations with a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. You must safely confine drainage from undiked areas in a catchment basin or holding pond.

(3) Periodically and upon a regular schedule visually inspect each container of oil for deterioration and maintenance needs, including the foundation and support of each container that is on or above the surface of the ground.

(4) Engineer or update new and old tank battery installations in accordance with good engineering practice to prevent discharges. You must provide at least one of the following:

(i) Container capacity adequate to assure that a container will not overfill if a pumper/gauger is delayed in making regularly scheduled rounds.

(ii) Overflow equalizing lines between containers so that a full container can overflow to an adjacent container.

(iii) Vacuum protection adequate to prevent container collapse during a pipeline run or other transfer of oil from the container.

(iv) High level sensors to generate and transmit an alarm signal to the computer where the facility is subject to a computer production control system.

(d) *Facility transfer operations, oil production facility.* (1) Periodically and upon a regular schedule inspect all aboveground valves and piping associated with transfer operations for the general condition of flange joints, valve glands and bodies, drip pans, pipe supports, pumping well polish rod stuffing boxes, bleeder and gauge valves, and other such items.

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- On a separate Tier Two Confidential Location Information Sheet, enter the name and CAS number of each chemical for which you are keeping the location confidential.

- Enter the appropriate location and storage information, as described above for non-confidential locations.

- Attach the Tier Two Confidential Location Information Sheet to the Tier Two form. This separates confidential locations from other information that will be disclosed to the public.

Certification

Instructions for this section are included on page one of these instructions.

[55 FR 30650, July 26, 1990]

PART 372—TOXIC CHEMICAL RELEASE REPORTING: COMMUNITY RIGHT-TO-KNOW

Subpart A—General Provisions

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372.95 Alternate threshold certifications and instructions.

AUTHORITY: 42 U.S.C. 11023 and 11048.

SOURCE: 53 FR 4525, Feb. 16, 1988, unless otherwise noted.

Subpart A—General Provisions**§ 372.1 Scope and purpose.**

This part sets forth requirements for the submission of information relating to the release of toxic chemicals under section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986. The information collected under this part is intended to inform the general public and the communities surrounding covered facilities about releases of toxic chemicals, to assist research, to aid in the development of regulations, guidelines, and standards, and for other purposes. This part also sets forth requirements for suppliers to notify persons to whom they distribute mixtures or trade name products containing toxic chemicals that they contain such chemicals.

§ 372.3 Definitions.

Terms defined in sections 313(b)(1)(c) and 329 of Title III and not explicitly defined herein are used with the meaning given in Title III. For the purpose of this part:

Acts means Title III.

Article means a manufactured item: (1) Which is formed to a specific shape or design during manufacture; (2) which has end use functions dependent in whole or in part upon its shape or design during end use; and (3) which does not release a toxic chemical under normal conditions of processing or use of that item at the facility or establishments.

Beneficiation means the preparation of ores to regulate the size (including crushing and grinding) of the product, to remove unwanted constituents, or to improve the quality, purity, or grade of a desired product.

Boiler means an enclosed device using controlled flame combustion and having the following characteristics:

(1)(i) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

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(ii) The unit's combustion chamber and primary energy recovery sections(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

(iii) While in operation, the unit must maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(iv) The unit must export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(2) The unit is one which the Regional Administrator has determined, on a case-by-case basis, to be a boiler, after considering the standards in § 260.32 of this chapter.

Chief Executive Officer of the tribe means the person who is recognized by the Bureau of Indian Affairs as the chief elected administrative officer of the tribe.

Coal extraction means the physical removal or exposure of ore, coal, minerals, waste rock, or overburden prior to beneficiation, and encompasses all extraction-related activities prior to beneficiation. Extraction does not include beneficiation (including coal preparation), mineral processing, in situ leaching or any further activities.

Customs territory of the United States means the 50 States, the District of Columbia, and Puerto Rico.

Disposal means any underground injection, placement in landfills/surface impoundments, land treatment, or other intentional land disposal.

EPA means the United States Environmental Protection Agency.

Establishment means an economic unit, generally at a single physical location, where business is conducted or where services or industrial operations are performed.

Facility means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with such person). A facility may contain more than one establishment.

Full-time employee means 2,000 hours per year of full-time equivalent employment. A facility would calculate the number of full-time employees by totaling the hours worked during the calendar year by all employees, including contract employees, and dividing that total by 2,000 hours.

Import means to cause a chemical to be imported into the customs territory of the United States. For purposes of this definition, to cause means to intend that the chemical be imported and to control the identity of the imported chemical and the amount to be imported.

Indian Country means *Indian country* as defined in 18 U.S.C. 1151. That section defines Indian country as:

(a) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

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Indian tribe means those tribes federally recognized by the Secretary of the Interior.

Industrial furnace means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

- (1) Cement kilns.
- (2) Lime kilns.
- (3) Aggregate kilns.
- (4) Phosphate kilns.
- (5) Coke ovens.
- (6) Blast furnaces.
- (7) Smelting, melting and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces).
- (8) Titanium dioxide chloride process oxidation reactors.
- (9) Methane reforming furnaces.
- (10) Pulping liquor recovery furnaces.
- (11) Combustion devices used in the recovery of sulfur values from spent sulfuric acid.
- (12) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as-generated.
- (13) Such other devices as the Administrator may, after notice and comment, add to this list on the basis of one or more of the following factors:

(i) The design and use of the device primarily to accomplish recovery of material products;

(ii) The use of the device to burn or reduce raw materials to make a material product;

(iii) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;

(iv) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;

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(v) The use of the device in common industrial practice to produce a material product; and

(vi) Other factors, as appropriate.

Manufacture means to produce, prepare, import, or compound a toxic chemical. Manufacture also applies to a toxic chemical that is produced coincidentally during the manufacture, processing, use, or disposal of another chemical or mixture of chemicals, including a toxic chemical that is separated from that other chemical or mixture of chemicals as a byproduct, and a toxic chemical that remains in that other chemical or mixture of chemicals as an impurity.

Mixture means any combination of two or more chemicals, if the combination is not, in whole or in part, the result of a chemical reaction. However, if the combination was produced by a chemical reaction but could have been produced without a chemical reaction, it is also treated as a mixture. A mixture also includes any combination which consists of a chemical and associated impurities.

Otherwise use means any use of a toxic chemical, including a toxic chemical contained in a mixture or other trade name product or waste, that is not covered by the terms “manufacture” or “process.” Otherwise use of a toxic chemical does not include disposal, stabilization (without subsequent distribution in commerce), or treatment for destruction unless:

(1) The toxic chemical that was disposed, stabilized, or treated for destruction was received from off-site for the purposes of further waste management; or

(2) The toxic chemical that was disposed, stabilized, or treated for destruction was manufactured as a result of waste management activities on materials received from off-site for the purposes of further waste management activities. Relabeling or redistributing of the toxic chemical where no repackaging of the toxic chemical occurs does not constitute otherwise use or processing of the toxic chemical.

Overburden means the unconsolidated material that overlies a deposit of useful materials or ores. It does not include any portion of ore or waste rock.

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Previously classified means properly classified, according to § 372.22(b) under a given Standard Industrial Classification (SIC) code, as identified in the Standard Industrial Classification Manual, 1987, Executive Office of the President, Office of Management and Budget.

Process means the preparation of a toxic chemical, after its manufacture, for distribution in commerce:

(1) In the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance, or

(2) As part of an article containing the toxic chemical. Process also applies to the processing of a toxic chemical contained in a mixture or trade name product.

RCRA approved test method includes Test Method 9095 (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, Third Edition, September 1986, as amended by Update I, November 15, 1992.

Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any toxic chemical.

Senior management official means an official with management responsibility for the person or persons completing the report, or the manager of environmental programs for the facility or establishments, or for the corporation owning or operating the facility or establishments responsible for certifying similar reports under other environmental regulatory requirements.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction and Indian Country.

Title III means Title III of the Superfund Amendments and Reauthorization

Act of 1986, also titled the Emergency Planning and Community Right-To-Know Act of 1986.

Toxic chemical means a chemical or chemical category listed in § 372.65.

Trade name product means a chemical or mixture of chemicals that is distributed to other persons and that incorporates a toxic chemical component that is not identified by the applicable chemical name or Chemical Abstracts Service Registry number listed in § 372.65.

Treatment for destruction means the destruction of a toxic chemical in waste such that the substance is no longer the toxic chemical subject to reporting under EPCRA section 313. Treatment for destruction does not include the destruction of a toxic chemical in waste where the toxic chemical has a heat value greater than 5,000 British thermal units and is combusted in any device that is an industrial furnace or boiler.

Waste stabilization means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquid as determined by a RCRA approved test method for evaluating solid waste as defined in this section. A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "stabilization," "waste fixation," or "waste solidification."

[53 FR 4525, Feb. 16, 1988, as amended at 55 FR 30656, July 26, 1990; 62 FR 23891, May 1, 1997; 71 FR 32474, June 6, 2006]

§ 372.5 Persons subject to this part.

Owners and operators of facilities described in §§ 372.22 and 372.45 are subject to the requirements of this part. If the owner and operator of a facility are different persons, only one need report under § 372.17 or provide a notice under § 372.45 for each toxic chemical in a mixture or trade name product distributed from the facility. However, if no report is submitted or notice provided, EPA will hold both the owner and the operator liable under section 325(c) of Title III, except as provided in §§ 372.38(e) and 372.45(g).

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Subsector or industry code	Exceptions and/or limitations
425120 Wholesale Trade Agents and Brokers.	Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified.
562112 Hazardous Waste Collection	Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC).
562211 Hazardous Waste Treatment and Disposal.	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 <i>et seq.</i>
562212 Solid Waste Landfill	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 <i>et seq.</i>
562213 Solid Waste Combustors and Incinerators.	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 <i>et seq.</i>
562219 Other Nonhazardous Waste Treatment and Disposal.	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 <i>et seq.</i>
562920 Materials Recovery Facilities	Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 <i>et seq.</i>

§ 372.25 Thresholds for reporting.

Except as provided in §§372.27 and 372.28, the threshold amounts for purposes of reporting under §372.30 for toxic chemicals are as follows:

(a) With respect to a toxic chemical manufactured (including imported) or processed at a facility during the following calendar years:

1987—75,000 pounds of the chemical manufactured or processed for the year.

1988—50,000 pounds of the chemical manufactured or processed for the year.

1989 and thereafter—25,000 pounds of the chemical manufactured or processed for the year.

(b) With respect to a chemical otherwise used at a facility, 10,000 pounds of the chemical used for the applicable calendar year.

(c) With respect to activities involving a toxic chemical at a facility, when more than one threshold applies to the activities, the owner or operator of the facility must report if it exceeds any applicable threshold and must report on all activities at the facility involving the chemical, except as provided in §372.38.

(d) When a facility manufactures, processes, or otherwise uses more than one member of a chemical category listed in §372.65(c), the owner or operator of the facility must report if it exceeds any applicable threshold for the total volume of all the members of the category involved in the applicable activity. Any such report must cover all activities at the facility involving members of the category.

(e) A facility may process or otherwise use a toxic chemical in a recycle/reuse operation. To determine whether

the facility has processed or used more than an applicable threshold of the chemical, the owner or operator of the facility shall count the amount of the chemical added to the recycle/reuse operation during the calendar year. In particular, if the facility starts up such an operation during a calendar year, or in the event that the contents of the whole recycle/reuse operation are replaced in a calendar year, the owner or operator of the facility shall also count the amount of the chemical placed into the system at these times.

(f) A toxic chemical may be listed in §372.65 with the notation that only persons who manufacture the chemical, or manufacture it by a certain method, are required to report. In that case, only owners or operators of facilities that manufacture that chemical as described in §372.65 in excess of the threshold applicable to such manufacture in §372.25, §372.27, or §372.28 are required to report. In completing the reporting form, the owner or operator is only required to account for the quantity of the chemical so manufactured and releases associated with such manufacturing, but not releases associated with subsequent processing or use of the chemical at that facility. Owners and operators of facilities that solely process or use such a chemical are not required to report for that chemical.

(g) A toxic chemical may be listed in §372.65 with the notation that it is in a specific form (e.g., fume or dust, solution, or friable) or of a specific color (e.g., yellow or white). In that case, only owners or operators of facilities that manufacture, process, or use that chemical in the form or of the color, specified in §372.65 in excess of the

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threshold applicable to such activity in § 372.25, § 372.27, or § 372.28 are required to report. In completing the reporting form, the owner or operator is only required to account for the quantity of the chemical manufactured, processed, or used in the form or color specified in § 372.65 and for releases associated with the chemical in that form or color. Owners or operators of facilities that solely manufacture, process, or use such a chemical in a form or color other than those specified by § 372.65 are not required to report for that chemical.

(h) Metal compound categories are listed in § 372.65(c). For purposes of determining whether any of the thresholds specified in § 372.25, § 372.27, or § 372.28 are met for metal compound category, the owner or operator of a facility must make the threshold determination based on the total amount of all members of the metal compound category manufactured, processed, or used at the facility. In completing the release portion of the reporting form for releases of the metal compounds, the owner or operator is only required to account for the weight of the parent metal released. Any contribution to the mass of the release attributable to other portions of each compound in the category is excluded.

[53 FR 4525, Feb. 16, 1988, as amended at 59 FR 61502, Nov. 30, 1994; 64 FR 58750, Oct. 29, 1999]

§ 372.27 Alternate thresholds and certifications.

(a) Except as provided in paragraph (e) of this section:

(1) *General.* With respect to the manufacture, process, or otherwise use of a toxic chemical, the owner or operator of a facility may apply an alternate threshold of 1 million pounds per year to that chemical if the owner or operator calculates that the facility would have:

(i) No more than 2,000 pounds of total on-site and off-site disposal or other releases (including disposal or other releases that resulted from catastrophic events); and

(ii) An annual reportable amount of that toxic chemical not exceeding 5,000 pounds for the combined total quantities released at the facility; disposed

within the facility; treated for destruction at the facility; recovered at the facility as a result of recycling operations; combusted for the purpose of energy recovery at the facility; transferred from the facility to off-site locations for the purpose of recycling, energy recovery, treatment, and/or disposal; and managed as a result of remedial actions, catastrophic events, or one-time events not associated with production processes during the reporting year. These volumes correspond to the sum of amounts reportable for data elements on EPA Form R (EPA Form 9350-1; Rev. 01/2006) as Part II column B or sections 8.1 (total quantity released), 8.2 (quantity used for energy recovery on-site), 8.3 (quantity used for energy recovery off-site), 8.4 (quantity recycled on-site), 8.5 (quantity recycled off-site), 8.6 (quantity treated on-site), 8.7 (quantity treated off-site), and 8.8 (quantity released to the environment as a result of remedial actions, catastrophic events, or one-time events not associated with production processes).

(2) *Chemicals of Special Concern.* With respect to the manufacture, process, or otherwise use of a toxic chemical, the owner or operator of a facility may apply an alternate threshold of 1 million pounds per year to that chemical if the owner or operator calculates that the facility would have:

(i) Zero on-site and off-site disposal or other releases (including disposal or other releases that resulted from catastrophic events); and

(ii) An "Annual Reportable Amount of a Chemical of Special Concern" not exceeding 500 pounds. The "Annual Reportable Amount of a Chemical of Special Concern" is the combined total of:

(A) Quantities treated for destruction at the facility;

(B) Quantities recovered at the facility as a result of recycling operations;

(C) Quantities combusted for the purpose of energy recovery at the facility;

(D) Quantities transferred from the facility to off-site locations for the purpose of recycling, energy recovery, and/or treatment; and

(E) Quantities managed through recycling, energy recovery, or treatment for destruction that were the result of remedial actions, catastrophic events, or one-time events not associated with

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production processes during the reporting year.

(b) If an owner or operator of a facility determines that the owner or operator may apply one of the alternate reporting thresholds specified in paragraph (a) of this section for a specific toxic chemical, the owner or operator is not required to submit a report for that chemical under § 372.30, but must submit a certification statement that contains the information required in § 372.95. The owner or operator of the facility must also keep records as specified in § 372.10(d).

(c) Threshold determination provisions of § 372.25 and exemptions pertaining to threshold determinations in § 372.38 are applicable to the determination of whether the alternate threshold has been met.

(d) Each certification statement under this section for activities involving a toxic chemical that occurred during a calendar year at a facility must be submitted to EPA and to the State in which the facility is located on or before July 1 of the next year.

(e) The alternative thresholds described in paragraph (a) of this section are limited by the following:

(1) The provisions of paragraph (a)(1) of this section do not apply to any chemicals listed in § 372.28.

(2) The provisions of paragraph (a)(2) of this section apply only to chemicals listed in § 372.28.

(3) Dioxins and dioxin-like compounds are not eligible for the alternate thresholds described in paragraph (a) of this section.

[59 FR 61502, Nov. 30, 1994, as amended at 64 FR 58750, Oct. 29, 1999; 71 FR 76944, Dec. 22, 2006]

§ 372.28 Lower thresholds for chemicals of special concern.

(a) Notwithstanding § 372.25 or § 372.27, for the toxic chemicals set forth in this section, the threshold amounts for manufacturing (including importing), processing, and otherwise using such toxic chemicals are as set forth in this section.

(1) Chemical listing in alphabetic order.

Chemical name	CAS No.	Reporting threshold
Aldrin	00309–00–2	100
Benzo(g,h,i)perylene	00191–24–2	10
Chlordane	00057–74–9	10
Heptachlor	00076–44–8	10
Hexachlorobenzene	00118–74–1	10
Isodrin	00465–73–6	10
Lead (this lower threshold does not apply to lead when contained in a stainless steel, brass or bronze alloy)	7439–92–1	100
Mercury	07439–97–6	10
Methoxychlor	00072–43–5	100
Octachlorostyrene	29082–74–4	10
Pendimethalin	40487–42–1	100
Pentachlorobenzene	00608–93–5	10
Polychlorinated biphenyl (PCBs)	01336–36–3	10
Tetrabromobisphenol A	00079–94–7	100
Toxaphene	08001–35–2	10
Trifluralin	01582–09–8	100

(2) Chemical categories in alphabetic order.

Category name	Reporting threshold
Dioxin and dioxin-like compounds (Manufacturing; and the processing or otherwise use of dioxin and dioxin-like compounds if the dioxin and dioxin-like compounds are present as contaminants in a chemical and if they were created during the manufacturing of that chemical) (This category includes only those chemicals listed below).	0.1 grams
67562–39–4 1,2,3,4,6,7,8-Heptachlorodibenzofuran	
55673–89–7 1,2,3,4,7,8,9-Heptachlorodibenzofuran	
70648–26–9 1,2,3,4,7,8-Hexachlorodibenzofuran	
57117–44–9 1,2,3,6,7,8-Hexachlorodibenzofuran	
72918–21–9 1,2,3,7,8,9-Hexachlorodibenzofuran	

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Category name	Reporting threshold
60851-34-5 2,3,4,6,7,8-Hexachlorodibenzofuran	100
39227-28-6 1,2,3,4,7,8-Hexachlorodibenzo- <i>p</i> -dioxin	
57653-85-7 1,2,3,6,7,8-Hexachlorodibenzo- <i>p</i> -dioxin	
19408-74-3 1,2,3,7,8,9-Hexachlorodibenzo- <i>p</i> -dioxin	
35822-46-9 1,2,3,4,6,7,8-Heptachlorodibenzo- <i>p</i> -dioxin	
Lead Compounds	
39001-02-0 1,2,3,4,6,7,8,9-Octachlorodibenzofuran	
03268-87-9 1,2,3,4,6,7,8,9-Octachlorodibenzo- <i>p</i> -dioxin	
57117-41-6 1,2,3,7,8-Pentachlorodibenzofuran	
57117-31-4 2,3,4,7,8-Pentachlorodibenzofuran	
40321-76-4 1,2,3,7,8-Pentachlorodibenzo- <i>p</i> -dioxin	10
51207-31-9 2,3,7,8-Tetrachlorodibenzofuran	
01746-01-6 2,3,7,8 Tetrachlorodibenzo- <i>p</i> -dioxin	100
Mercury compounds	
Polycyclic aromatic compounds (PACs) (This category includes only those chemicals listed below).	100
00056-55-3 Benz(a)anthracene	
00205-99-2 Benzo(b)fluoranthene	
00205-82-3 Benzo(j)fluoranthene	
00207-08-9 Benzo(k)fluoranthene	
00206-44-0 Benzo(j,k)fluorene	
00189-55-9 Benzo(r,s,t)pentaphene	
00218-01-9 Benzo(a)phenanthrene	
00050-32-8 Benzo(a)pyrene	
00226-36-8 Dibenz(a,h)acridine	
00224-42-0 Dibenz(a,j)acridine	
00053-70-3 Dibenzo(a,h)anthracene	
00194-59-2 7H-Dibenzo(c,g)carbazole	
05385-75-1 Dibenzo(a,e)fluoranthene	
00192-65-4 Dibenzo(a,e)pyrene	
00189-64-0 Dibenzo(a,h)pyrene	
00191-30-0 Dibenzo(a,l)pyrene	
00057-97-6 7,12-Dimethylbenz(a)anthracene	
00193-39-5 Indeno[1,2,3-cd]pyrene	
00056-49-5 3-Methylcholanthrene	
03697-24-3 5-Methylchrysene	
05522-43-0 1-Nitropyrene	

(b) The threshold determination provisions under § 372.25(c) through (h) and the exemptions under § 372.38(b) through (h) are applicable to the toxic chemicals listed in paragraph (a) of this section.

[64 FR 58750, Oct. 29, 1999, as amended at 66 FR 4527, Jan. 17, 2001]

§ 372.30 Reporting requirements and schedule for reporting.

(a) For each toxic chemical known by the owner or operator to be manufactured (including imported), processed, or otherwise used in excess of an applicable threshold quantity in § 372.25, § 372.27, or § 372.28 at its covered facility described in § 372.22 for a calendar year, the owner or operator must submit to EPA and to the State in which the facility is located a completed EPA Form R (EPA Form 9350-1) and, for the dioxin and dioxin-like compounds category, EPA Form R Schedule 1 (EPA

Form 9350-3) in accordance with the instructions referred to in subpart E of this part.

(b)(1) The owner or operator of a covered facility is required to report as described in paragraph (a) of this section on a toxic chemical that the owner or operator knows is present as a component of a mixture or trade name product which the owner or operator receives from another person, if that chemical is imported, processed, or otherwise used by the owner or operator in excess of an applicable threshold quantity in § 372.25, § 372.27, or § 372.28 at the facility as part of that mixture or trade name product.

(2) The owner or operator knows that a toxic chemical is present as a component of a mixture or trade name product (i) if the owner or operator knows or has been told the chemical identity or Chemical Abstracts Service Registry

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Number of the chemical and the identity or Number corresponds to an identity or Number in §372.65, or (ii) if the owner or operator has been told by the supplier of the mixture or trade name product that the mixture or trade name product contains a toxic chemical subject to section 313 of the Act or this part.

(3) To determine whether a toxic chemical which is a component of a mixture or trade name product has been imported, processed, or otherwise used in excess of an applicable threshold in §372.25, §372.27, or §372.28 at the facility, the owner or operator shall consider only the portion of the mixture or trade name product that consists of the toxic chemical and that is imported, processed, or otherwise used at the facility, together with any other amounts of the same toxic chemical that the owner or operator manufactures, imports, processes, or otherwise uses at the facility as follows:

(i) If the owner or operator knows the specific chemical identity of the toxic chemical and the specific concentration at which it is present in the mixture or trade name product, the owner or operator shall determine the weight of the chemical imported, processed, or otherwise used as part of the mixture or trade name product at the facility and shall combine that with the weight of the toxic chemical manufactured (including imported), processed, or otherwise used at the facility other than as part of the mixture or trade name product. After combining these amounts, if the owner or operator determines that the toxic chemical was manufactured, processed, or otherwise used in excess of an applicable threshold in §372.25, §372.27, or §372.28, the owner or operator shall report the specific chemical identity and all releases of the toxic chemical on EPA Form R in accordance with the instructions referred to in subpart E of this part.

(ii) If the owner or operator knows the specific chemical identity of the toxic chemical and does not know the specific concentration at which the chemical is present in the mixture or trade name product, but has been told the upper bound concentration of the chemical in the mixture or trade name product, the owner or operator shall

assume that the toxic chemical is present in the mixture or trade name product at the upper bound concentration, shall determine whether the chemical has been manufactured, processed, or otherwise used at the facility in excess of an applicable threshold as provided in paragraph (b)(3)(i) of this section, and shall report as provided in paragraph (b)(3)(i) of this section.

(iii) If the owner or operator knows the specific chemical identity of the toxic chemical, does not know the specific concentration at which the chemical is present in the mixture or trade name product, has not been told the upper bound concentration of the chemical in the mixture or trade name product, and has not otherwise developed information on the composition of the chemical in the mixture or trade name product, then the owner or operator is not required to factor that chemical in that mixture or trade name product into threshold and release calculations for that chemical.

(iv) If the owner or operator has been told that a mixture or trade name product contains a toxic chemical, does not know the specific chemical identity of the chemical and knows the specific concentration at which it is present in the mixture or trade name product, the owner or operator shall determine the weight of the chemical imported, processed, or otherwise used as part of the mixture or trade name product at the facility. Since the owner or operator does not know the specific identity of the toxic chemical, the owner or operator shall make the threshold determination only for the weight of the toxic chemical in the mixture or trade name product. If the owner or operator determines that the toxic chemical was imported, processed, or otherwise used as part of the mixture or trade name product in excess of an applicable threshold in §372.25, §372.27, or §372.28, the owner or operator shall report the generic chemical name of the toxic chemical, or a trade name if the generic chemical name is not known, and all releases of the toxic chemical on EPA Form R in accordance with the instructions referred to in subpart E of this part.

(v) If the owner or operator has been told that a mixture or trade name

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product contains a toxic chemical, does not know the specific chemical identity of the chemical, and does not know the specific concentration at which the chemical is present in the mixture or trade name product, but has been told the upper bound concentration of the chemical in the mixture or trade name product, the owner or operator shall assume that the toxic chemical is present in the mixture or trade name product at the upper bound concentration, shall determine whether the chemical has been imported, processed, or otherwise used at the facility in excess of an applicable threshold as provided in paragraph (b)(3)(iv) of this section, and shall report as provided in paragraph (b)(3)(iv) of this section.

(vi) If the owner or operator has been told that a mixture or trade name product contains a toxic chemical, does not know the specific chemical identity of the chemical, does not know the specific concentration at which the chemical is present in the mixture or trade name product, including information they have themselves developed, and has not been told the upper bound concentration of the chemical in the mixture or trade name product, the owner or operator is not required to report with respect to that toxic chemical.

(c) A covered facility may consist of more than one establishment. The owner or operator of such a facility at which a toxic chemical was manufactured (including imported), processed, or otherwise used in excess of an applicable threshold may submit a separate Form R for each establishment or for each group of establishments within the facility to report the activities involving the toxic chemical at each establishment or group of establishments, provided that activities involving that toxic chemical at all the establishments within the covered facility are reported. If each establishment or group of establishments files separate reports then for all other chemicals subject to reporting at that facility they must also submit separate reports. However, an establishment or group of establishments does not have to submit a report for a chemical that is not manufactured (including imported), processed, otherwise used, or

released at that establishment or group of establishments.

(d) Each report under this section for activities involving a toxic chemical that occurred during a calendar year at a covered facility must be submitted on or before July 1 of the next year. The first such report for calendar year 1987 activities must be submitted on or before July 1, 1988.

[53 FR 4525, Feb. 16, 1988; 53 FR 12748, Apr. 18, 1988, as amended at 56 FR 29185, June 26, 1991; 64 FR 58751, Oct. 29, 1999; 72 FR 26553, May 10, 2007]

§ 372.38 Exemptions.

(a) *De minimis concentrations of a toxic chemical in a mixture.* If a toxic chemical is present in a mixture of chemicals at a covered facility and the toxic chemical is in a concentration in the mixture which is below 1 percent of the mixture, or 0.1 percent of the mixture in the case of a toxic chemical which is a carcinogen as defined in 29 CFR 1910.1200(d)(4), a person is not required to consider the quantity of the toxic chemical present in such mixture when determining whether an applicable threshold has been met under § 372.25 or determining the amount of release to be reported under § 372.30. This exemption applies whether the person received the mixture from another person or the person produced the mixture, either by mixing the chemicals involved or by causing a chemical reaction which resulted in the creation of the toxic chemical in the mixture. However, this exemption applies only to the quantity of the toxic chemical present in the mixture. If the toxic chemical is also manufactured (including imported), processed, or otherwise used at the covered facility other than as part of the mixture or in a mixture at higher concentrations, in excess of an applicable threshold quantity set forth in § 372.25, the person is required to report under § 372.30. This exemption does not apply to toxic chemicals listed in § 372.28, except for purposes of § 372.45(d)(1).

(b) *Articles.* If a toxic chemical is present in an article at a covered facility, a person is not required to consider the quantity of the toxic chemical

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present in such article when determining whether an applicable threshold has been met under § 372.25, § 372.27, or § 372.28 or determining the amount of release to be reported under § 372.30. This exemption applies whether the person received the article from another person or the person produced the article. However, this exemption applies only to the quantity of the toxic chemical present in the article. If the toxic chemical is manufactured (including imported), processed, or otherwise used at the covered facility other than as part of the article, in excess of an applicable threshold quantity set forth in § 372.25, § 372.27, or § 372.28, the person is required to report under § 372.30. Persons potentially subject to this exemption should carefully review the definitions of *article* and *release* in § 372.3. If a release of a toxic chemical occurs as a result of the processing or use of an item at the facility, that item does not meet the definition of *article*.

(c) *Uses.* If a toxic chemical is used at a covered facility for a purpose described in this paragraph (c), a person is not required to consider the quantity of the toxic chemical used for such purpose when determining whether an applicable threshold has been met under § 372.25, § 372.27, or § 372.28 or determining the amount of releases to be reported under § 372.30. However, this exemption only applies to the quantity of the toxic chemical used for the purpose described in this paragraph (c). If the toxic chemical is also manufactured (including imported), processed, or otherwise used at the covered facility other than as described in this paragraph (c), in excess of an applicable threshold quantity set forth in § 372.25, § 372.27, or § 372.28, the person is required to report under § 372.30.

(1) Use as a structural component of the facility.

(2) Use of products for routine janitorial or facility grounds maintenance. Examples include use of janitorial cleaning supplies, fertilizers, and pesticides similar in type or concentration to consumer products.

(3) Personal use by employees or other persons at the facility of foods, drugs, cosmetics, or other personal items containing toxic chemicals, including supplies of such products with-

in the facility such as in a facility operated cafeteria, store, or infirmary.

(4) Use of products containing toxic chemicals for the purpose of maintaining motor vehicles operated by the facility.

(5) Use of toxic chemicals present in process water and non-contact cooling water as drawn from the environment or from municipal sources, or toxic chemicals present in air used either as compressed air or as part of combustion.

(d) *Activities in laboratories.* If a toxic chemical is manufactured, processed, or used in a laboratory at a covered facility under the supervision of a technically qualified individual as defined in § 720.3(ee) of this title, a person is not required to consider the quantity so manufactured, processed, or used when determining whether an applicable threshold has been met under § 372.25, § 372.27, or § 372.28 or determining the amount of release to be reported under § 372.30. This exemption does not apply in the following cases:

(1) Specialty chemical production.

(2) Manufacture, processing, or use of toxic chemicals in pilot plant scale operations.

(3) Activities conducted outside the laboratory.

(e) *Certain owners of leased property.* The owner of a covered facility is not subject to reporting under § 372.30 if such owner's only interest in the facility is ownership of the real estate upon which the facility is operated. This exemption applies to owners of facilities such as industrial parks, all or part of which are leased to persons who operate establishments in any SIC code or NAICS code in § 372.23 that is subject to the requirements of this part, where the owner has no other business interest in the operation of the covered facility.

(f) *Reporting by certain operators of establishments on leased property such as industrial parks.* If two or more persons, who do not have any common corporate or business interest (including common ownership or control), operate separate establishments within a single facility, each such person shall treat the establishments it operates as a facility for purposes of this part. The determinations in §§ 372.22 and 372.25 shall

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be made for those establishments. If any such operator determines that its establishment is a covered facility under § 372.22 and that a toxic chemical has been manufactured (including imported), processed, or otherwise used at the establishment in excess of an applicable threshold in § 372.25, § 372.27, or § 372.28 for a calendar year, the operator shall submit a report in accordance with § 372.30 for the establishment. For purposes of this paragraph (f), a common corporate or business interest includes ownership, partnership, joint ventures, ownership of a controlling interest in one person by the other, or ownership of a controlling interest in both persons by a third person.

(g) *Coal extraction activities.* If a toxic chemical is manufactured, processed, or otherwise used in extraction by facilities in SIC code 12, or in NAICS codes 212111, 212112 or 212113, a person is not required to consider the quantity of the toxic chemical so manufactured, processed, or otherwise used when determining whether an applicable threshold has been met under § 372.25, § 372.27, or § 372.28, or determining the amounts to be reported under § 372.30.

(h) *Metal mining overburden.* If a toxic chemical that is a constituent of overburden is processed or otherwise used by facilities in SIC code 10, or in NAICS codes 212221, 212222, 212231, 212234 or 212299, a person is not required to consider the quantity of the toxic chemical so processed, or otherwise used when determining whether an applicable threshold has been met under § 372.25, § 372.27, or § 372.28, or determining the amounts to be reported under § 372.30.

[53 FR 4525, Feb. 16, 1988, as amended at 62 FR 23892, May 1, 1997; 64 FR 58751, Oct. 29, 1999; 71 FR 32477, June 6, 2006]

Subpart C—Supplier Notification Requirements

§ 372.45 Notification about toxic chemicals.

(a) Except as provided in paragraphs (c), (d), and (e) of this section and § 372.65, a person who owns or operates a facility or establishment which:

(1) Is in SIC codes 20 through 39 or a NAICS code that corresponds to SIC

codes 20 through 39 as set forth in § 372.23(b),

(2) Manufactures (including imports) or processes a toxic chemical, and

(3) Sells or otherwise distributes a mixture or trade name product containing the toxic chemical, to (i) a facility described in § 372.22, or (ii) to a person who in turn may sell or otherwise distributes such mixture or trade name product to a facility described in § 372.22(b), must notify each person to whom the mixture or trade name product is sold or otherwise distributed from the facility or establishment in accordance with paragraph (b) of this section.

(b) The notification required in paragraph (a) of this section shall be in writing and shall include:

(1) A statement that the mixture or trade name product contains a toxic chemical or chemicals subject to the reporting requirements of section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 and 40 CFR part 372.

(2) The name of each toxic chemical, and the associated Chemical Abstracts Service registry number of each chemical if applicable, as set forth in § 372.65.

(3) The percent by weight of each toxic chemical in the mixture or trade name product.

(c) Notification under this section shall be provided as follows:

(1) For a mixture or trade name product containing a toxic chemical listed in § 373.65 with an effective date of January 1, 1987, the person shall provide the written notice described in paragraph (b) of this section to each recipient of the mixture or trade name product with at least the first shipment of each mixture or trade name product to each recipient in each calendar year beginning January 1, 1989.

(2) For a mixture or trade name product containing a toxic chemical listed in § 372.65 with an effective date of January 1, 1989 or later, the person shall provide the written notice described in paragraph (b) of this section to each recipient of the mixture or trade name product with at least the first shipment of the mixture or trade name product to each recipient in each calendar year beginning with the applicable effective date.



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**Friday,
January 26, 2007**

Part II

The President

**Executive Order 13423—Strengthening
Federal Environmental, Energy, and
Transportation Management**

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Presidential Documents

Title 3—

Executive Order 13423 of January 24, 2007

The President

Strengthening Federal Environmental, Energy, and Transportation Management

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to strengthen the environmental, energy, and transportation management of Federal agencies, it is hereby ordered as follows:

Section 1. Policy. It is the policy of the United States that Federal agencies conduct their environmental, transportation, and energy-related activities under the law in support of their respective missions in an environmentally, economically and fiscally sound, integrated, continuously improving, efficient, and sustainable manner.

Sec. 2. Goals for Agencies. In implementing the policy set forth in section 1 of this order, the head of each agency shall:

(a) improve energy efficiency and reduce greenhouse gas emissions of the agency, through reduction of energy intensity by (i) 3 percent annually through the end of fiscal year 2015, or (ii) 30 percent by the end of fiscal year 2015, relative to the baseline of the agency's energy use in fiscal year 2003;

(b) ensure that (i) at least half of the statutorily required renewable energy consumed by the agency in a fiscal year comes from new renewable sources, and (ii) to the extent feasible, the agency implements renewable energy generation projects on agency property for agency use;

(c) beginning in FY 2008, reduce water consumption intensity, relative to the baseline of the agency's water consumption in fiscal year 2007, through life-cycle cost-effective measures by 2 percent annually through the end of fiscal year 2015 or 16 percent by the end of fiscal year 2015;

(d) require in agency acquisitions of goods and services (i) use of sustainable environmental practices, including acquisition of biobased, environmentally preferable, energy-efficient, water-efficient, and recycled-content products, and (ii) use of paper of at least 30 percent post-consumer fiber content;

(e) ensure that the agency (i) reduces the quantity of toxic and hazardous chemicals and materials acquired, used, or disposed of by the agency, (ii) increases diversion of solid waste as appropriate, and (iii) maintains cost-effective waste prevention and recycling programs in its facilities;

(f) ensure that (i) new construction and major renovation of agency buildings comply with the *Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings set forth in the Federal Leadership in High Performance and Sustainable Buildings Memorandum of Understanding (2006)*, and (ii) 15 percent of the existing Federal capital asset building inventory of the agency as of the end of fiscal year 2015 incorporates the sustainable practices in the Guiding Principles;

(g) ensure that, if the agency operates a fleet of at least 20 motor vehicles, the agency, relative to agency baselines for fiscal year 2005, (i) reduces the fleet's total consumption of petroleum products by 2 percent annually through the end of fiscal year 2015, (ii) increases the total fuel consumption that is non-petroleum-based by 10 percent annually, and (iii) uses plug-in hybrid (PIH) vehicles when PIH vehicles are commercially available at

a cost reasonably comparable, on the basis of life-cycle cost, to non-PIH vehicles; and

(h) ensure that the agency (i) when acquiring an electronic product to meet its requirements, meets at least 95 percent of those requirements with an Electronic Product Environmental Assessment Tool (EPEAT)-registered electronic product, unless there is no EPEAT standard for such product, (ii) enables the Energy Star feature on agency computers and monitors, (iii) establishes and implements policies to extend the useful life of agency electronic equipment, and (iv) uses environmentally sound practices with respect to disposition of agency electronic equipment that has reached the end of its useful life.

Sec. 3. Duties of Heads of Agencies. In implementing the policy set forth in section 1 of this order, the head of each agency shall:

(a) implement within the agency sustainable practices for (i) energy efficiency, greenhouse gas emissions avoidance or reduction, and petroleum products use reduction, (ii) renewable energy, including bioenergy, (iii) water conservation, (iv) acquisition, (v) pollution and waste prevention and recycling, (vi) reduction or elimination of acquisition and use of toxic or hazardous chemicals, (vii) high performance construction, lease, operation, and maintenance of buildings, (viii) vehicle fleet management, and (ix) electronic equipment management;

(b) implement within the agency environmental management systems (EMS) at all appropriate organizational levels to ensure (i) use of EMS as the primary management approach for addressing environmental aspects of internal agency operations and activities, including environmental aspects of energy and transportation functions, (ii) establishment of agency objectives and targets to ensure implementation of this order, and (iii) collection, analysis, and reporting of information to measure performance in the implementation of this order;

(c) establish within the agency programs for (i) environmental management training, (ii) environmental compliance review and audit, and (iii) leadership awards to recognize outstanding environmental, energy, or transportation management performance in the agency;

(d) within 30 days after the date of this order (i) designate a senior civilian officer of the United States, compensated annually in an amount at or above the amount payable at level IV of the Executive Schedule, to be responsible for implementation of this order within the agency, (ii) report such designation to the Director of the Office of Management and Budget and the Chairman of the Council on Environmental Quality, and (iii) assign the designated official the authority and duty to (A) monitor and report to the head of the agency on agency activities to carry out subsections (a) and (b) of this section, and (B) perform such other duties relating to the implementation of this order within the agency as the head of the agency deems appropriate;

(e) ensure that contracts entered into after the date of this order for contractor operation of government-owned facilities or vehicles require the contractor to comply with the provisions of this order with respect to such facilities or vehicles to the same extent as the agency would be required to comply if the agency operated the facilities or vehicles;

(f) ensure that agreements, permits, leases, licenses, or other legally-binding obligations between the agency and a tenant or concessionaire entered into after the date of this order require, to the extent the head of the agency determines appropriate, that the tenant or concessionaire take actions relating to matters within the scope of the contract that facilitate the agency's compliance with this order;

(g) provide reports on agency implementation of this order to the Chairman of the Council on such schedule and in such format as the Chairman of the Council may require; and

(h) provide information and assistance to the Director of the Office of Management and Budget, the Chairman of the Council, and the Federal Environmental Executive.

Sec. 4. *Additional Duties of the Chairman of the Council on Environmental Quality.* In implementing the policy set forth in section 1 of this order, the Chairman of the Council on Environmental Quality:

(a) (i) shall establish a Steering Committee on Strengthening Federal Environmental, Energy, and Transportation Management to advise the Director of the Office of Management and Budget and the Chairman of the Council on the performance of their functions under this order that shall consist exclusively of (A) the Federal Environmental Executive, who shall chair, convene and preside at meetings of, determine the agenda of, and direct the work of, the Steering Committee, and (B) the senior officials designated under section 3(d)(i) of this order, and (ii) may establish subcommittees of the Steering Committee, to assist the Steering Committee in developing the advice of the Steering Committee on particular subjects;

(b) may, after consultation with the Director of the Office of Management and Budget and the Steering Committee, issue instructions to implement this order, other than instructions within the authority of the Director to issue under section 5 of this order; and

(c) shall administer a presidential leadership award program to recognize exceptional and outstanding environmental, energy, or transportation management performance and excellence in agency efforts to implement this order.

Sec. 5. *Duties of the Director of the Office of Management and Budget.* In implementing the policy set forth in section 1 of this order, the Director of the Office of Management and Budget shall, after consultation with the Chairman of the Council and the Steering Committee, issue instructions to the heads of agencies concerning:

(a) periodic evaluation of agency implementation of this order;

(b) budget and appropriations matters relating to implementation of this order;

(c) implementation of section 2(d) of this order; and

(d) amendments of the Federal Acquisition Regulation as necessary to implement this order.

Sec. 6. *Duties of the Federal Environmental Executive.* A Federal Environmental Executive designated by the President shall head the Office of the Federal Environmental Executive, which shall be maintained in the Environmental Protection Agency for funding and administrative purposes. In implementing the policy set forth in section 1 of this order, the Federal Environmental Executive shall:

(a) monitor, and advise the Chairman of the Council on, performance by agencies of functions assigned by sections 2 and 3 of this order;

(b) submit a report to the President, through the Chairman of the Council, not less often than once every 2 years, on the activities of agencies to implement this order; and

(c) advise the Chairman of the Council on the Chairman's exercise of authority granted by subsection 4(c) of this order.

Sec. 7. *Limitations.* (a) This order shall apply to an agency with respect to the activities, personnel, resources, and facilities of the agency that are located within the United States. The head of an agency may provide that this order shall apply in whole or in part with respect to the activities, personnel, resources, and facilities of the agency that are not located within the United States, if the head of the agency determines that such application is in the interest of the United States.

(b) The head of an agency shall manage activities, personnel, resources, and facilities of the agency that are not located within the United States, and with respect to which the head of the agency has not made a determination under subsection (a) of this section, in a manner consistent with the policy set forth in section 1 of this order to the extent the head of the agency determines practicable.

Sec. 8. Exemption Authority. (a) The Director of National Intelligence may exempt an intelligence activity of the United States, and related personnel, resources, and facilities, from the provisions of this order, other than this subsection and section 10, to the extent the Director determines necessary to protect intelligence sources and methods from unauthorized disclosure.

(b) The head of an agency may exempt law enforcement activities of that agency, and related personnel, resources, and facilities, from the provisions of this order, other than this subsection and section 10, to the extent the head of an agency determines necessary to protect undercover operations from unauthorized disclosure.

(c) (i) The head of an agency may exempt law enforcement, protective, emergency response, or military tactical vehicle fleets of that agency from the provisions of this order, other than this subsection and section 10.

(ii) Heads of agencies shall manage fleets to which paragraph (i) of this subsection refers in a manner consistent with the policy set forth in section 1 of this order to the extent they determine practicable.

(d) The head of an agency may submit to the President, through the Chairman of the Council, a request for an exemption of an agency activity, and related personnel, resources, and facilities, from this order.

Sec. 9. Definitions. As used in this order:

(a) "agency" means an executive agency as defined in section 105 of title 5, United States Code, excluding the Government Accountability Office;

(b) "Chairman of the Council" means the Chairman of the Council on Environmental Quality, including in the Chairman's capacity as Director of the Office of Environmental Quality;

(c) "Council" means the Council on Environmental Quality;

(d) "environmental" means environmental aspects of internal agency operations and activities, including those environmental aspects related to energy and transportation functions;

(e) "greenhouse gases" means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride;

(f) "life-cycle cost-effective" means the life-cycle costs of a product, project, or measure are estimated to be equal to or less than the base case (i.e., current or standard practice or product);

(g) "new renewable sources" means sources of renewable energy placed into service after January 1, 1999;

(h) "renewable energy" means energy produced by solar, wind, biomass, landfill gas, ocean (including tidal, wave, current and thermal), geothermal, municipal solid waste, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project;

(i) "energy intensity" means energy consumption per square foot of building space, including industrial or laboratory facilities;

(j) "Steering Committee" means the Steering Committee on Strengthening Federal Environmental, Energy, and Transportation Management established under subsection 4(b) of this order;

(k) "sustainable" means to create and maintain conditions, under which humans and nature can exist in productive harmony, that permit fulfilling

the social, economic, and other requirements of present and future generations of Americans; and

(l) "United States" when used in a geographical sense, means the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Northern Mariana Islands, and associated territorial waters and airspace.

Sec. 10. General Provisions. (a) This order shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(c) This order is intended only to improve the internal management of the Federal Government and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities, entities, officers, employees or agents, or any other person.

Sec. 11. Revocations; Conforming Provisions. (a) The following are revoked:

- (i) Executive Order 13101 of September 14, 1998;
- (ii) Executive Order 13123 of June 3, 1999;
- (iii) Executive Order 13134 of August 12, 1999, as amended;
- (iv) Executive Order 13148 of April 21, 2000; and
- (v) Executive Order 13149 of April 21, 2000.

(b) In light of subsection 317(e) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107), not later than January 1 of each year through and including 2010, the Secretary of Defense shall submit to the Senate and the House of Representatives a report regarding progress made toward achieving the energy efficiency goals of the Department of Defense.

(c) Section 3(b)(vi) of Executive Order 13327 of February 4, 2004, is amended by striking "Executive Order 13148 of April 21, 2000" and inserting in lieu thereof "other executive orders".



THE WHITE HOUSE,
January 24, 2007.

V Virginia-Specific Rules

There were no findings that required the use of Virginia-specific citations.